

VZCZCXRO7157
PP RUEHQU
DE RUEHPU #0228/01 0611920
ZNR UUUUU ZZH
P 021920Z MAR 09
FM AMEMBASSY PORT AU PRINCE
TO RUEHC/SECSTATE WASHDC PRIORITY 9678
INFO RUEHZH/HAITI COLLECTIVE PRIORITY
RUMIAAA/HQ USSOUTHCOM J2 MIAMI FL PRIORITY

UNCLAS SECTION 01 OF 02 PORT AU PRINCE 000228

SIPDIS

STATE FOR WHA/EX, WHA/CAR, INR/IAA, INL (KEVIN BROWN)
STATE PASS USAID FOR LAC/CAR

E.O. 12958: N/A

TAGS: [PGOV](#) [PREL](#) [PHUM](#) [HA](#)

SUBJECT: HAITI: PREVAL ESTABLISHES COMMISSIONS ON JUSTICE
AND THE CONSTITUTION

REF: 07 PORT AU PRINCE 558

Summary

1. (SBU) President Rene Preval on February 19 established commissions on judicial and constitutional reform, two of his key political priorities for which he is attempting to generate consensus. Amending the constitution is the more controversial initiative, where many critics suspect Preval is aiming to make it possible for him to run again. Haiti nevertheless needs to improve an overburdened and inept justice system and overhaul its unwieldy constitution. End summary.

Preval: Judicial System Corrupt and Ineffective

2. (U) President Preval presided over a formal ceremony February 19 at the National Palace inaugurating commissions on judicial reform and the constitution that he established by Presidential decree the day before. His speech acknowledged a continued lack of progress in reforming the justice sector, which he admitted was corrupt and staffed by inadequately trained and underpaid judges. Courts were insufficiently equipped to carry out their legal obligations. Inefficient coordination between the judicial and police systems also compromised the integrity of the judicial system.

3. (U) Preval said that prisons are ''full of people who should have been freed'' and streets are ''full of delinquents who should be incarcerated.'' The Judicial Reform Commission, comprised of eighteen members from civil society, the legal profession and political organizations, will be led by ''Fusion'' party spokesperson Micha Gaillard. It is mandated to develop a short- and long-term plan of action within 12 months.

Will Consensus and Quick Recommendations Be Enough?

4. (U) Despite his lack of a legal background, Gaillard's political and consensus building skills make him well-suited to lead the Commission. Addressing the inauguration ceremony, he emphasized that the Commission would take an inclusive and participatory approach to its review of reforms in three areas: the judiciary, the police and the prison system. Gaillard told the Ambassador February 19 he was confident Preval would grant his commission the autonomy it needed to work. He said he understood the imperative of producing recommendations that could be quickly implemented and showcase progress, which will be needed to reassure a skeptical public. He pointed to the appointment of the President of Haiti's Supreme Court (Cour de Cassation) and the naming of members to the Superior Council of the Judiciary (Conseil Superieur du Pouvoir Judiciaire - CSPJ) as

actions that could immediately strengthen the judicial system.

Prior Efforts on Justice Reform May Pave the Road Forward

¶15. (U) Gaillard considered Preval genuinely committed to continuing judicial reform. He recalled Preval's April 2007 request to him to collaborate in an informal working group with civil society, business and human rights representatives and parliamentarians to formulate recommendations to improve the justice sector. The current Commission would build upon that foundation. That working group, also under Gaillard's charge, is credited with facilitating passage in late 2007 of three pieces of judicial legislation reform which will increase judicial independence and oversight by establishing the CSPJ, set out qualifications and obligations of investigators and district court judges, and re-open Haiti's magistracy school. The ust-appointed Commission may also press for passage of other important laws already in draft form and under discussion: a law guaranteeing habeas corpus and limiting preventive detention; penal and procedural code reform (which would incorporate into the code new types of crime such as money laundering, as well as modernize investigative techniques); and a judicial framework act, which would permit reorganization of the Ministry of Justice and Public Security.

¶16. (SBU) Gaillard emphasized the Commission would seek to reinforce the capacity of the Ministry of Justice, not usurp its authority or mandate. He told the Ambassador that he considers Minister of Justice Exume a capable partner.

PORT AU PR 00000228 002 OF 002

Constitutional Reform Moves to the Front Burner

¶17. (U) Preval announced at the same February 19 ceremony the establishment of a Commission on the Constitution. He argued that the 1987 Constitution was outdated and a source of instability. Preval told a Palace audience that "if the country's mother law (the constitution) is sick, then the entire country is sick." Preval highlighted his commitment to broad dialogue and said the Commission's recommendations could be submitted to Parliament as early as September.

¶18. (SBU) The seventeen-member Constitution Commission will be chaired by Le Matin newspaper Chief Editor and respected constitutional historian Claude Moise. The Commission also includes personalities from the academic, human rights and civil society sectors. Preval appointed Moise in 2007 to head a constitutional reform working group. Since that time, he identified several problematic provisions of the Constitution, including its ban on dual nationality, an unwieldy and complicated system of elections, and an overly-arduous constitutional amendment process (reftel).

¶19. (U) At the installation ceremony, Moise argued that the Constitution endangered "govern-ability" and hence, Haiti's stability. He asserted it was critical to take into account the financial and human resources of the country in assessing the import and utility of the Constitution in its current form. In a March 1 radio interview, Moise said his commission would consult widely with experts and other interested parties in Haiti, and with any foreign constitutional experts who offered their ideas. Moise said the commission's job was to help form a consensus around reforming the constitution. He demurred when asked for specific amendments he supported, saying his commission would debate these internally before making the discussion public.

Political Parties Respond: Mixed Views

¶10. (U) Major political parties have yet to comment on the constitutional commission, but the response of several lesser parties has been mixed. Assembly of Progressive National

Democrats (RDNP) Secretary-General and Kiskeya University Dean of Law, Mirlande Manigat, said February 26 that amendments to the Constitution should be adopted according to the constitution's own procedures. She warned that amendment procedures may be thwarted if partial Senate elections do not take place according to plan. (Note: The 1987 constitution requires that both houses of two successive legislatures approve constitutional amendments in identical form by a two-thirds vote. The current Senate, which lacks 12 of its 30 members due to delayed elections, lacks sufficient members to approve amendments. End note.)

¶11. (U) Luc Mesadieu of the Christian Movement for a New Haiti (MOCHRENHA) believed revision of the Constitution was essential, but considered Preval's intentions suspect. He warned that Preval is seeking to revise the constitution to allow for consecutive presidential terms and to establish a ''presidential regime.'' (Note: the current constitution limits the President to two, non-consecutive terms. End note.)

Comment

¶12. (SBU) The appointment of these bodies follows the establishment of commissions investigating the creation of a public security force or army (in operation for over a year), enhancing Haiti's economic competitiveness, and exploiting information/communication technology (the latter two appointed approximately two months ago). These commissions are in keeping with Preval's practice of seeking dialogue and consensus on hard political issues and structural economic challenges. His persistent critics suspect he will use the commissions to bypass institutions such as the Parliament and ministries. Some observers, including political friends of Preval, suspect that his motive for pushing constitutional reform is to allow himself to run for a third term. Still, Preval's directive that the commission on the constitution should submit proposals to parliament is consistent with adhering to the 1987 constitution's amendment procedures. With the clock ticking toward the end of his second term (in early 2011), Preval's window of opportunity for acting on strategic political and economic initiatives is slowly narrowing.

TIGHE